

FILED

JUL 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO CASTREJON-ALVAREZ,

Defendant - Appellant.

No. 05-30621

D.C. No. CR-05-02068-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Submitted July 17, 2006^{**}

Before: B. FLETCHER, HAWKINS and THOMAS, Circuit Judges.

We have reviewed the record and the opening brief. We conclude that the questions raised in this appeal are so insubstantial as not to require further

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Appellant's argument that the fact of the temporal relationship of the removal to the prior conviction is beyond the scope of the Supreme Court's recidivism exception is foreclosed by *United States v. Castillo-Rivera*, 244 F.3d 1020, 1025 (9th Cir. 2001). Further, the United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998), remains binding.

Accordingly, the government's motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.